

Columbus Charter Review Commission
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The Initiative Process in Ohio
Michael F. Curtin

Chair Bartley and members of the Columbus Charter Review Commission, thank you for serving on this important panel and thank you for allowing me the opportunity to share some historical perspective on the initiative process in Ohio and in Columbus and on the current need for reform.

I had the privilege of serving on the city's Charter Review Commission of 2014, which among other reforms recommended establishing decennial review commissions following each federal census, beginning this year.

So I am pleased to play a role in the inauguration of this process. This requirement reflects the Jeffersonian ideal that to properly serve the people, our foundation documents – our constitutions and charters – cannot stay fixed under glass, but need to adapt to changing times and circumstances, and be re-examined at regular intervals to give citizens an opportunity to voice concerns over and consider changes in the structure and workings of their governments.

As a newspaperman for 38 years at The Columbus Dispatch, a state representative for four years, and a member of the Ohio Constitutional Modernization Commission during my tenure in the Ohio General Assembly, I've long tried to study and report on the evolution of our state and city governments.

This discussion is devoted to the use and abuse of the power of the initiative. Ohio long has been a leader among the states in providing its citizens with the power of the initiative.

Since 1912, Ohioans have been empowered to initiate laws and state constitutional amendments by gathering signatures on petitions to place issues on the statewide ballot.

Since 1914, the Columbus City Charter has granted similar powers. By petition, Columbus voters can place issues on the city ballot to initiate charter amendments or city ordinances.

For the most part, the power of the initiative has served Ohio and its cities well. Its mere presence in the Ohio Constitution and in hundreds of city charters reminds lawmakers of where ultimate authority resides.

It is instructive for citizens and officeholders to understand the original purpose of the initiative, born in the turn-of-the-century Progressive Era – generally defined as the period spanning the 1890s to the 1920s.

The Progressive Era spawned many reforms in response to the rampant corruption that existed in city, state and national politics. The reforms took aim at monopoly barons, price fixing, and elected officials on the take.

At the dawn of the Progressive Era, Ohio was as corrupt as any state. Its biggest cities were run by political machines and their bosses, known for vote buying and selling and a variety of other corrupt practices.

George S. Marshall, the 35th mayor of Columbus from 1910 to 1911, wrote, “The brewers and other liquor interests and the public-service corporations (utilities) dominated the life of the city . . . (and) the spoils system ruled most everywhere.”

It was in this environment that Ohio held its fourth state constitutional convention, at the Statehouse in 1912, which produced 42 proposed amendments to the Ohio Constitution, 34 of which were adopted by the voters. Among the reforms were the constitutional initiative, the statutory initiative and the referendum.

When Teddy Roosevelt – the great monopoly buster – came to the Ohio Statehouse on Feb. 21, 1912 to address the state constitutional convention, he promoted the initiative for its potential to check the monopolists and all those whose prime interest is special privilege.

This was the same constitutional convention that produced Ohio's home-rule amendment – allowing Ohio's cities for the first time to craft their own charters and escape micromanagement by the state legislature.

Columbus quickly took advantage of this new power of self-government. The city created its first charter commission to draft a city charter for voter consideration. The commission was co-chaired by noted reformer Washington Gladden, pastor of First Congregational Church, and William Oxley Thompson, president of The Ohio State University.

That first charter, approved by Columbus voters on May 5, 1914, provided citizens with the power of the initiative and referendum – modeled after the state constitutional provisions.

A substantive difference between Ohio's constitutional initiative and the Columbus City Charter initiative was that the state constitutional initiative set a 10 percent signature requirement (10 percent of Ohio electors), while the Columbus City Charter set a 6 percent requirement (6 percent of city electors).

Twenty-one years later, in November 1933, Columbus voters approved a charter amendment lowering the required signature threshold to 5 percent, which remains in place today.

For approximately seven decades, the initiative process in Ohio and other states worked for the most part as intended – as a check on special interests and a direct democracy tool for citizens to advance societal goals being ignored by lawmakers – from woman suffrage to the minimum wage.

But a troubling trend began to emerge in the 1980s and 1990s and has gained momentum since.

Some sharp political operators, beginning on the West Coast, developed the idea that the initiative could be used to obtain special privilege, even monopolistic privilege, for a given set of investors.

If the cause were popular enough, or popular sounding enough, investors could be recruited to finance an initiative campaign to allow them to corner the market on a sector of the economy in a state or municipality.

In 2000, Pulitzer Prize-winning journalist David Broder of The Washington Post, for decades the dean of American political journalism, published a book titled, “Democracy Derailed: Initiative Campaigns and the Power of Money.”

The book chronicled the emergence of this new industry dedicated to securing private and exclusive economic benefits via the ballot initiative. The original purpose of the initiative was being turned on its head.

Two years after the publication of Broder’s book, the National Conference of State Legislatures convened a special task force to examine the abuse of the initiative.

The task force examined data from across the nation and concluded: “The initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool *that too often is exploited by special interests.*”

These special interests span the ideological spectrum from far right to far left. In various states, they have sought to corner the market on everything from green energy to highways, from education funding to marijuana.

Bipartisan concern over such abuses prompted a committee of the Ohio Constitutional Modernization Commission, in the summer of 2013, to begin discussing potential reforms to our state’s initiative process.

Committee members were mindful of Ohio’s experience with casino operators, who in 2009 successfully used the initiative process to not only win a monopoly on casinos, guaranteeing that Ohio would have only four casinos owned by two companies, but also guaranteeing what their tax rates would be.

Committee members also were aware that a group of investors was planning a statewide initiative to corner the market on the commercial sale of marijuana, an amendment that appeared on the Ohio statewide ballot in November 2015.

Had that amendment been successful, it would have declared that only 10 pieces of property, owned – of course -- by backers of the initiative, could be used for the commercial cultivation of marijuana.

These experiences led me to co-sponsor an amendment to the Ohio Constitution, placed on the November ballot of 2015 by a bipartisan vote of the Ohio General Assembly, to protect Ohio’s initiative process from being used for personal economic benefit.

Fortunately, Ohio voters approved that amendment, so that the Ohio Constitution now has a very high barrier to prevent self-dealing entrepreneurs from being able to insert their monopolistic business plans into our state's foundation document.

This is the background that brings us to a self-dealing entity known as ProEnergy Ohio LLC.

For many years, beginning in 2012, ProEnergy LLC attempted to qualify a proposed constitutional amendment for Ohio's statewide ballot. That first attempt sought to transfer \$13 billion in state bond money to a New York account controlled by an unknown group of investors.

This investor group, if successful, supposedly would have taken it upon themselves to pursue "green energy" initiatives to benefit Ohio.

This proposed statewide measure died when the petition group failed to secure the required 385,247 signatures. Subsequently, the group failed several more times to qualify for the statewide ballot.

After Ohio voters approved the 2015 anti-monopoly amendment, prohibiting use of the constitutional initiative to create a commercial interest, commercial right or exclusive economic benefit not available to similarly situated persons or nonpublic entities, ProEnergy Ohio LLC turned its attention away from a statewide initiative and toward a Columbus initiative.

After failing in 2017 to secure the required number of signatures, the group reappeared in 2019 with an initiative whose aim was to secure \$87 million in city general fund revenues. After a legal battle over the sufficiency of the petition, it

was cleared for the November 2021 citywide ballot, where it appeared as Issue 7.

Had the initiative been successful, the city auditor would have been required to transfer \$87 million in general fund revenues to an account controlled by ProEnergy Ohio LLC, purportedly for management of renewable energy initiatives.

Fortunately, Columbus political and civic leaders organized an effective campaign to educate voters on the self-dealing nature of Issue 7, and it was overwhelmingly defeated in November 2021.

However, ProEnergy Ohio LLC is back. Three weeks ago, on March 4, it filed a statement with the city clerk of its intent to circulate another initiative petition, this one seeking a claim on \$42 million in general fund revenues, purportedly for management of renewable energy initiatives.

The prime mover behind ProEnergy Ohio LLC, John A. Clark Jr., has been indicted on four felony charges related to election falsification and tampering with government records, all related to Issue 7. As we sit here, Clark awaits trial in Franklin County Common Pleas Court.

Unlike the Ohio Constitution, the Columbus City Charter has no safeguards against self-dealing abuses of the initiative process.

As someone who hit the campaign trail last fall to address some of our area commissions and civic associations about the dangers of Issue 7, I can attest that neighborhood leaders were greatly surprised to learn that our city's initiative process is vulnerable to this type *and this magnitude* of abuse.

I also can assure you that legislators and legislative leaders in the Ohio General Assembly have taken interest in studying how they might assist Ohio's municipalities in safeguarding the initiative process from such abuse at the local level.

Ohio has 213 cities and approximately 600 villages whose electors, like those of Columbus, enjoy the right of the initiative.

Which potential safeguards you choose to recommend, and which safeguards the Columbus electorate may choose to approve this November, will be studied very carefully at the Statehouse as potential model legislation for other Ohio municipalities.

The leadership of the Ohio Senate is aware of your deliberations on this issue. State Sen. Hearcel Craig of Columbus and state Sen. Stephanie Kunze of Hilliard have expressed interest in potential bipartisan co-sponsorship of reform legislation to assist all of Ohio's cities and villages, and await our city's experience.

Chair Bartley and commission members, I hope this historical summary is of some value in your deliberations. I would be happy to entertain any questions you might have.